The State of West Bengal Vs Ajoy Dutta and Another

Court: Calcutta High Court

Date of Decision: Feb. 5, 2010

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 311, 386, 391
Evidence Act, 1872 â€" Section 106, 165

Hon'ble Judges: Ragunath Ray, J; Amit Talukdar, J

Bench: Division Bench

Advocate: S.K. Mahato, for the Appellant; Subir Ganguly for the Accused/Respondents As State Defence, for the Respondent

Judgement

Amit Talukdar, J.
Fact of the unnatural death of the deceased Nilima Bose (nee Dutta) remains beyond the realm of dispute. Causes and

reasons concerns the learned Trial Court, which befuddled him in the process of his finding and resulted in an Order of acquittal for her Husband

and her Mother-in-Law.

2. The State of West Bengal has felt it was not a Just Justice and was persuaded to file this Government Appeal assailing the Order of acquittal on

21/12/1988.

3. The same having matured in our roaster, we took it up for hearing as we had found that notwithstanding issuance of Administrative Notice on

30/09/2002, none responded.

4. Keeping in view the decisions of Supreme Court of Bani Singh v. State of Uttar Pradesh, AIR 1999 SC 2439 and Rishi Nandan Pandit v. State

of Bihar, AIR 1988 SC 3804, which shows that a Criminal Appeal cannot be disposed of in the absence of the learned counsel of the parties, we

engaged a Panel Lawyer to argue the Appeal on behalf of the State of West Bengal and another Member of the said Panel to act as a State

Defence.

5. Thereafter, we took up the same for hearing. For the Appellant Shri Sushil Kr. Mahato submitted that the learned Trial Court did not correctly

assess the evidence of the brother (P.W.1, Suranjan Bose) of the deceased and the other acquaintances (P.W.2, Krishno Gobind Sarkar and

P.W.3. Rishikesh Moira), who has clearly deposed with regard to the mental cruelty and torture inflicted upon the deceased by her in laws (the

Respondents).

6. Shri Mahato further focussed on the said evidence to show that quarrel in the matrimonial home of deceased Nilima was a daily affair and being

unable to bear with the torture at her matrimonial home, Nilima committed suicide.

7. Shri Mahato submitted that the appreciation of evidence in this regard by the learned Trial Court, was completely erroneous.

8. Shri Mahato was of the view that the Respondents have south to build up a case to the effect that the deceased Nilima lost her mental balance.

9. The Defence Witnesses examined on behalf of the Respondents and the various stand taken in the said direction, according to Shri Mahato,

would not cut any ice in view of the evidence of P.W.10, Dr. K.B. Sinha, Superintendent of Purulia Sadar Hospital, where deceased Nilima used

to work as a Staff Nurse, who had described her as absolutely fit and had stated that she had drawn the salary for the month of May 1985 (she

passed away on 10/05/1985).

10. Evidnece of P.W.11, Santiranjan Das, Officiating Head Clerk of the said Hospital, was also relied upon by Shri Mahato to show that she had

drawn her salary just few days before her death (on 02/05/1985), which completely negated the story of unsoundness of mind as vainly tried to be

corrected by the Respondents.

11. According to Shri Mahato, both P.W.5, Swapn Kr. Das and P.W.6, Sisir Kr. Das, both neighbours of the deceased, also deposed that she

was completely normal.

12. On the basis of the same, Shri Mahato prayed for setting aside the Order of acquittal recorded by the learned Trial Court.

13. Shri Ganguly (State Defence) supported the Order of acquittal.

14. Shri Ganguly at the outset, wondered as to why the Prosecution withheld D.W.2, Sankar Sekhar Ghosh, although he was the author of the

G.D. Entry No. 352 dated 10/05/1985 (Ext.6) informing about the fact of the death of Nilima.

15. According to Shri Ganguly not only D.W.2, Sankar Sekhar Ghosh but other important witness like Prthish Bose, a relative of the family, who

stayed in Purulia Town, with, whom P.W.1, Suranjan Bose after having heard the news of the death of his sister contacted before proceeding

towards the house of the Respondents, was also not examined.

16. Since several important witnesses were not brought before the Court, necessarily, an adverse inference could be drawn against the

Prosecution, was the opinion of Shri Ganguly.

17. Outright, discounting of evidence of P.W.4, Santanu Kr. Das and P.W.5, Swapan Kr. Das with regard to their version of torture, as described

by the Deceased Nilima - Shri Ganguly was of the view that on account of previous enmity with the Respondents, their version was tainted and

was liable to be rejected.

18. Shri Ganguly waxed much eloquence with regard to the non examination of the Autopsy Surgeon.

19. He thereafter submitted that the elder brother of respondent No.1, Bijoy Dutta was left out for reasons best known to the Investigating

Agency.

20. He submitted that this raises a great doubt about the actual case of the Prosecution.

21. Rounding up his submission. Shri Ganguly doubted the entire Prosecution case, which was a upshot due to the death of deceased Nilima from

the angle of depression, which resulted from failure for her to become a Mother.

22. He strongly argued that D.W.1, Sovan Kashyab, D.W.2, Sankar Sekhar Ghosh, D.W.3, Rathindra Nath Mahato and D.W.4, Ashok Kr.

Addy completely disproved the Prosecution case and the learned Trial Court rightly came to the conclusion that the Respondents had not either

forced her to commit suicide or subjected her to mental curelty.

23. HP has also submitted for the first time, the witnesses spoke what they have stated before the Court and accordingly, on the basis of the same

he supported the Order under Appeal and prayed for dismissing it.

24. In the quagmire of the urnatural death of deceased Nilima Bose (nee Dutta), a Staff Nurse of Purulia Sadar Hospital, who after a stint of

amorous affair, entered into a wedlock with Respondent No.1, an employee of the Health Department and her tragic end would be tracked by us

in this Appeal.

25. Little is known with regard to her life after she was married with the Respondent No.1. All that, which is found from the evidence of P.W.1,

Suranjan Bose, elder brother of the deceased, reveals that on 29/04/1985 both the Respondents had come his house on the occasion of his

Daughter"s marriage and there was a quarrel, which attracted his attention and he found that the Respondents were abusing his Sister filthily and

even Respondent No.2 tried to assault her.

26. He brokered peace by praying for forgiveness from Respondent No.2.

27. Immediately, thereafter both the Respondents prepared to leave his house and along with Nilima, who was extremely unwilling to accompany

them. He spoke that it was disclosed by her ".....she was being systematically and continuously tortured in this way by Ajoy and Nirupama.

28. P.W.1, Suranjan Bose saw them off at Howrah Station on 01/05/1985. It was on 12/05/1985 he got a telegram from Bijoy Dutta (elder

brother of respondent No.1) that Nilima is no more.

29. Since he was bed ridden on account of hyper tension, he subsequently reached Purulia on 20/05/1985 being accompanied by P.W.2, Krishno

Gobind Sarkar and P.W.3, Rishikesh Moira met one Prithish Bose, whose non examination irked Shri Ganguly and thereafter lodged a Written

Complaint (Ext.1), which was treated as the formal FIR (Ext.7) by P.W.8, Kanak Kanti Chaudhuri, who, at the relevant time of the incident, was

Officer-in-Charge of the Purulia Town Police Station.

30. Fact of Nirupama being heckled by the Respondents on the date of the marriage of P.W.1, Suranjan Bose"s Daughter and threat given to her,

ound corroboration by both P.W.2. Krishno Govbind Sarkar and P.W.3, Rishikesh Moira. Both accompanied P.W.1, Suranjan Bose to Purulia.

31. We would proceed a little further to grapple with the basic outline of the Prosecution case, where we find there are three other important

witnesses - P.W.4, Santanu Kr. Das, P.W.S, Swapan Kr. Das and P.W.6, Sisir Kr. Das. They are neighbours of the Respondents at Dulmi in

Purulia Town. Their evidence is of some importance.

32. P.W.4, Santanu Kr. Das has deposed that he had noticed constant quarrel between deceased Nilima and the respondents and said that she

had disclosed to him that she was not inclined to stay in her matrimonial home.

33. P.W.4, Santanu Kr. Das further deposed that on 10/05/1985, after having heard about the death of Nilima, he went to the house of the

Respondents. But Respondent No.2 abused her filthily for having entered their house without permission. He found Nilima dead and smelt

kerosene from the smoke coming out.

34. Similarly, P.W.5, Swapan Kr. Das, another neighbour of the Respondents deposed about the quarrel between Nilima and the Respondents.

He also heard from Nilima that she had no intention of leading her matrimonial life. This witness, happens to be the childhood friend of the

Respondent No.1. He signed on the Seizure List (Ext.2) relating to cash, ornaments and other articles, which was prepared by P.W.7, Jiban

Chakraborty, Officer-in-Charge of Purulia Town Police Station in the presence of D.W.2, Sankar Sekhar Ghosh. He also found Nilima dead in

her room on the date of occurrence after he had visited it.

35. P.W.6, Sisir Kr. Das, another close door neighbour of the Respondents disposed that there was quarrel between the deceased and the

respondents and he also stated that on 10/05/1985 after hearing about the death of Nilima, he rushed to her house and found her ablaze or her

room.

36. We will take a short break from the focal area of the Prosecution case to see three very important segments of the Prosecution case. These

are:

a) P.W.4, Santanu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das found Nilima dead in an unnatutral circumstance in a burnt

condition in her room at the house of the Respondents.

b) They have deposed in no uncertain terms that there used to be regular quarrel between her and the Respondents.

c) P.W.4, Santantu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das have stated that Nilima was absolutely mentally fit.

37. This was beefed up by the evidence of P.W.10, Dr. K.B. Sinha, Superintendent of Purulia Sadar Hospital and P.W.11. Santiranjan Das,

Officiating Head Clerk of the said Hospital, who deposed that she had drawn her pay even for the Month of May 1985, few days before her

untimely departure from this world.

38. P.W.10, Dr. K.B. Sinha, who was also a District Medical Officer and discharged the functions of the Superintendent of Purulia Sadar

Hospital, a man of some eminence deposed ".....Nilima Dutta was mentally fit so long she was in service. I know Nilima Dutta since 1979.

Since that time I am attached to Sadar Hospital. I have seen Nilima Dutta all along to perforn her duty properly in the hospital. I have never seen

her suffering from any short of mental depression. There was also no complaint to that effect to me from any quarter. Nilima Dutta drew her pay

personally in May, 1985.

39. At once, if we again come back to the mainstream of the Procecution case, we find that deceased Nilima Dutta was found mentally fit by

P.W.10, Dr. K.B. Sinha, Superintendent of Purulia Sadar Hospital, who was very categoric in this regard and clearly asserted that he had

personally known her for the last six years.

40. The evidence of P.W.10, Dr. K.B. Sinha, Superintendent of Purulia Sadar Hospital is also of great importance from another angle. P.W.10,

Dr. K.B. Sinha, not only, was the Superintendent of Purulia Sadar Hospital but we must not forget that he was the District Medical Officer and as

such, had there been any short of report that Nilima suffered from any mental incapacity, certainly, he, apart from his capacity as an eminent

physician - would have deposed with regard to the same being the Superintendent of Purulia Sadar Hospital as well as the District Medical Officer.

41. Coupled with this, we have already noticed the evidence of P.W.4, Santanu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6. Sisir Kr. Das with

regard to sound faculty of Nilima.

42. As such, we cannot have any qualms with regard to the faculty of Nilima in whatsoever manner.

43. The evidence adduced by the Defence - D.Ws, particularly D.W.4, Ashok Kr. Addy, a Psychiatrist of Purulia Sadar Hospital and D.W.5,

Ajoy Dutta (Respondent No.1), who we find were more of an apology than as a Defence Witness.

44. D.W.4, Ashok Kr. Addy, Psychiatrist of Purulia Sadar Hospital could not retrieve the Defence, on the contrary left them in the lurch. He

deposed ".....I am an expert of mental disease. On perusing the prescription marked as X for identification I am not in a position to say to

what was the disease of the patient. I could say on perusing the prescription the patient might have some emotional problem. From emotional

problem various mental diseases, may crop up. But without knowing the history of the patient it is not posslble on my part to say specific disease

from Nilima Bose was suffering.

45. In view of the entire conspectus of the Prosecution case in this regard, where the Defence had feigned Nilima was suffering from mental illness,

which drove her to commit suicide, pales into insignificance in the eye of unimpeachable evidence of P.W.10, Dr. K.B. Sinha, Superintendent of

Purulia Sadar Hospital along side the evidence of P.W.4, Santanu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das.

46. On the contrary, we find D.W.4, Dr. Ashok Kr. Addy of the Purulia Sadar Hospital exposed the Defence.

47. That Nilima and Respondent No.1 had a brief courtship and thereafter they became man and wife, has been brought on record through the

evidence of P.W.1, Suranjan Bose, brother of the deceased.

48. It has also been brought on record through the evidence of P.W.4, Santanu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6. Sisir Kr. Das that

after her marriage with the Respondent No.1, Nilima used to stay in the house of the Respondents. She was found dead in her room in the

condition, which we have noticed hereinabove, by P.W.4, Santanu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das and the Officer-

in-Charge of Purulia Town Police Station, P.W.7, Jiban Chakraborty, who prepared the Inquest (Ext.2) including D.W.2, Sankar Sekhar Ghosh.

49. Once it is found that the housewife had met with her unnatural end in her matrimonial home; obviously, heavy onus lies on her In Laws to prove

the cause of death. Since the ploy taken by the respondents in imputing mental destabilisation of Nilima for her failure to bear a child fails -

certainly, the noose of section 106 of the Evidence Act tightens on the Respondents.

50. Now this would bring us to the unimpeachable testimony of P.W.4, Santanu Kr. Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das,

close door neighbours of the Respondents, who in no uncertain terms disclosed that there used to be regular quarrel between Nilima.

51. Read in conjunction with the same, if we retrace a few steps behind to the deposition of P.W.1, Suranjan Bose, who was told by the

Deceased that she was being systematically and continuously tortured by the Respondents. She was unwilling to accompany them to her

matrimonial home from the marriage house, which they had come together on 29/04/1985 to attend the wedding of P.W.1, Suranjan Bose''s

Daughter, where she was subjected to harassment and cruelty by the Respondents.

52. This piece of evidence, which, in our view, is of starling value, can be easily fitted with the evidence of the neighbours (P.W.4, Santanu Kr.

Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das) of the Respondents.

53. If read as a whole, it gives a complete different shape to the Prosecution case.

54. That apart, Professor S.C. Majumdar, Lecturer and Head of the Department of Forensic & State Medicine, Bankura Sammilani Medical

College & Hospital held the Post Mortem examination on the dead body of Nilima. The same was marked as Ext. 9 without any objection by the

Defence, as reflected from Order No.20 dated 23/06/1988.

55. Professor S.C. Majumdar, Lecturer and Head of the Department of Forensic & State Medicine, Bankura Sammilani Medical College &

Hospital also gave his opinion (Ext.4). Simply, the finding of Professor Majumdar in his Report (Ext.9) will go into evidence. But not his opinion.

56. Much was left to be desired as to why Professor Majumdar could not be examined. Prosecution is absolutely silent on this point. P.W.9, S.M.

Pal, the Investigating Officer, also could not throw any light in this context. What is there, is there. Neither it can be improved nor removed.

57. It would be of utmost interest to notice that the death of Nilima in the circumstances, which we have noticed earlier in her matrimonial home on

10/05/1985, no information was given to P.W.1. Suranjan Bose and it is only on 14/05/1985 a telegram was sent by Respondent No.1 that she

had committed suicide by setting herself on fire. Immediately, after the occurrence, both P.W.4, Santanu Kr. Das and P.W.6, Sisir Kr. Das did not

find the Respondent No.1 in the house. In fact, the Investigating Officer P.W.9, S.M. Pal submitted the Report in final form against them showing

them as absconders.

58. This is an extremely peculiar conduct of the Respondents in absenting themselves soon after the incident and the conduct of the Respondent

No.1 or the Respondent No.2 in informing the P.W.1. Suranjan Bose about the death of his Sister.

59. Furthermore, the evidence of P.W.4, Santanu Kr. Das and P.W.5, Swapan Kr. Das speaks of the presence of A-2 in the house but she could

not give any satisfactory answer with regard to the incident.

60. The learned Trial Court deduced from the appreciation of the evidence that the attempt of the Defence that Nilima committed suicide due to

mental derangement has not been established.

61. On the same breath he found that the Prosecution has also been unsuccessful to prove that on account of cruelty and inducement by the

Appellant, the deceased chose to put an end to her life and concluded ""..... so even after the conclusion of the trial, the death of Nilima

remains in the same stage of mystery as it was on the beginning of the trial.

62. In exercise of our plenary powers vested u/s 386(a), we are afraid, we would not be justified in remaining inside the mist. Instead, what is

required is that we should demystify the entire situation and to see what would be Just Desert.

63. The learned Trial Court had termed P.W.2, Krishno Gobind Sarkar and P.W.3, Rishikesh Moira as chance witnesses. He came to the said

conclusion as it was not possible for them to have been present at the time of Nilima being insulted during the marriage ceremony of P.W.1,

Suranjan Bose''s Daughter so they were mere chance witnesses and much credence was not attached to their evidence.

64. The learned Trial Court also did not put any emphasis on the quarrel on 29/04/1985, as deposed by P.W.1. Suranjan Bose, P.W.2, Krishno

Gobind Sarkar and P.W.3, Rishikesh Moira, since she put an end to her life on 10/05/1985, after some gap as it was not directly related wfth the

commission of the suicide.

65. Learned Trial Court further viewed the fact that deceased Nilima had served out different Hospitals in course of her tenure as a Staff Nurse but

she did not disclose the same to any of her colleagues with regard to the torture received by her from their in laws.

66. Failure of the prosecution to examine Prithish Bose, was also taken serious exception by the learned Trial Court.

67. While we do not share any of the aforesaid reasoning of the learned Trial Court as they are dehors the evidence; on the contrary, we are of the

opinion that the learned Trial Court should have played a more pro-active role by way of having brought on Record, the evidence of Prithish Bose

and others, whom he though fit and proper by way of exercising his Powers vested u/s 311 Cr PC. Instead, it found fault with the Prosecution in

this regard.

In the said process the lamp of Justice was tapered off along with the unfortunate lady with the lamp.

68. With utmost respect, we must say that this is not a sound management of a Trial.

69. In the light of the situation, which we have perceived in the foregoing paragraphs, we would conclude that the decision arrived at by the learned

Trial Court is required to be revisited.

70. The Acquittal recorded by the learned Trial Court, was not the outcome of a very positive analysis of the evidence and materials on Record.

71. The learned Trial Court fully lost sight of the fact that the deceased Nilima met with her end in her matrimonial home in unnatural circumstances.

The defence evidence with regard to her mental aberration has also been disbelieved by him. As such, the clock is put back and the Defence is

required to answer the reasons behind such death.

72. Furthermore, the evidence of P.W.4, Santami Kr. Das, P.W.5, Swapan Kr. Das and P.W.6, Sisir Kr. Das with regard to the turbulence in the

matrimonial home of Nilima should have been matched with the evidence of P.W.1, Suranjan Bose, P.W.2, Krishno Gobind Sarkar and P.W.3,

Rishikesh Moira preceding her death, which was ignored by the learned Trial Court, since it was punctuated by a gap of eight days.

73. We would not enter into such mathematics. Neither we would assess the cognitive state of her mind anterior to 29/04/1985 or posterior

thereof and just before her end on 10/05/1985. But simply, we can see the wholesome scene of her being made the subject matter of torture and

cruelty for reasons best known to the Respondents. If the defence case that Nilima, realising that she would not conceive, lost her mental balance -

conversely, if we pick out the aspersion made by the Respondent No.2 that Respondent No.1 would be given in marriage, we cannot be estopped

to conclude that failure of Nilima to give child birth and become a thorn in the entire flesh of the Respondents.

74. As we have found that the entire decision of the learned Trial Court necessitates that the same should be revisited, we would send back the

entire Matter on Remand.

75. We have not lost sight of the fact that the Respondent No.2, in the event she is amongst us, would be perhaps in her mid 90s and P.W.1,

Suranjan Bose, much into his geriatric age. It may be some of the witnesses have already left us.

76. An Order of Remand necessitates recasting the whole process entailing cost and consumption of valuable Judicial hours for redoing the

exercise. Yet, in our quest for Justice, we feel the Order of Acquittal should not be left untinkered. Otherwise, Justice would be the first casualty in

the alter of convenience.

77. The entire Matter is now sent on Remand.

78. The learned Trial Court would be at liberty to examine further witnesses on and above the ones, which are already on Record and examine

such other documents it may deem fit and proper in accordance with the steps as known to Law.

79. Thereafter, the learned Trial Court would write a fresh Judgment on the basis of his perception of the same without being obliquely guided by

the Order of Remand within six months positively from the date of communication of this Order.

Raghunath Ray, J. - I have gone through the well - founded Judgment of My Lord with utmost respect and admiration. I am in full agreement with

the conclusion My Lord has arrived at. To supplement I, however, feel it imperative to add a few lines on the question of exercise of plenary

power vested u/s 311 Cr PC as well u/s 165 of Evidence Act upon the learned Trial Courts.

81. My Lord has been pleased to quote a single sentence having much significance from the concluding portion of Para 18 of the learned Trial

Court''s Judgment, perhaps, to indicate lackadaisical attitude of the learned Trial Court and the same may be reproduced as under:

So, even after the conclusion of the trial, the death of Nilima remains in the same stage of mystery as it was on the beginning of the trial."" Such

abortive observation by the learned Trial Court has acted as eye opener for the justice seekers who had to calmly resign to their fate with the

learned Trial Court''s inconclusive verdict that even after a full fledged trial, learned Judge failed to unearth the mystery shrouded around the death

of Nilima, a staff nurse of Purulia Sadar-Hospital, the most unfortunate victim of this case. There is no doubt, that instead of recording his

helplessness in espousing the cause of justice even after conclusion of protracted trial, learned Trial Judge ought to have played a proactive role in

course of trial without remaining absolutely mute in several areas where he found the prosecution faulty. There was, however, no conscious

endeavour on the part of the learned Trial Judge to arrive at the truth. There is no whisper within the four corners of the Judgment impugned as to

why the learned Trial Court failed to invoke its plenary power u/s 311 of the Cr PC or u/s 165 of Evidence Act. His further observation in para 18

of the Judgment impugned:

Here the death of Nilima is covered by a ""cloak of mystery"" is, in fact, unwarranted in the context of his failure to take recourse to relevant and

appropriate provisions of law for unveiling the purported ''cloak of mystery''.

82. True, it is that Trial Courts presided over either by learned Magistrate or by learned Sessions Judge are invariably found hesitant/reluctant to

exercise plenary powers vested u/s 311 Cr PC or u/s 165 of Evidence Act upon them. Our common experiences, however, tell us that in Criminal

Courts whenever the Trial Judge exercises powers u/s 311 of the Code or u/s 165 of the Evidence Act, the defence counsel would raise

objections by saying that the Court could not fill the lacuna in the prosecution case. Apprehending this type of defence objection, learned Trial

Courts are perhaps, averse to exercise of plenary power vested upon them. Such a situation is neither desirable nor acceptable in the interest of

justice delivery system.

83. Therefore, it is the need of the hour to spell out the role of a Judge trying a Criminal Case in the light of judicial pronouncements of the Hon''ble

Apex Court. It has uniformly been held by the Hon''ble Apex Court that ""section 311 of the code and section 165 of the Evidence Act confer vast

and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process"".

In this context I would like to refer to a ruling of the Hon''ble Apex Court reported in AIR 1981 Supreme Court 1036 = 1981 Cri LJ 609

(Ramchander v. The State of Haryana). In this decision the Hon''ble Apex Court has been pleased to disapprove the ''unfortunate tendency'' of a

judge presiding over a trial ''to assume the role of a referee or an umpire''. The Hon''ble Apex Court has, therefore, observed as under:

If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording

machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the

truth."" It has also been further observed:

Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in

order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by section 165 of the Evidence Act with

the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form, at any

time, to any witness, or to the parties about any fact, relevant or irrelevant.

84. In another ruling reported in AIR 1997 SC 1023 (State of Rajasthan v. Anil alias Hanif and others) it is reiterated by the Hon''ble Apex Court

as under:

..... a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing

wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be

about or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won

the race.

85. Therefore, it is further elucidated : ""a trial judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the

appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the

witnesses, either during chief examination or cross-examination or even during re-examination to elicit the truth..... It is a useful exercise for trial

judge to remain active and alert so that errors can be minimised.

86. Reliance can also be placed in Zahirs''s case reported in AIR 2004 Supreme Court 3114 (Zahira Habibulla H. Sheikh and another v. State of

Gujarat and Others). The ambit, scope and content of section 311 of the Code and section 165 of the Evidence Act have been clearly outlined in

this decision. The participatory role of a trial judge during trial has been emphasized by the Hon''ble Apex Court in the afore-quoted ruling. It is

observed inter alia that the Presiding Officers of the Courts ''have to monitor proceedings in aid of justice.'' The object of exercise of plenary

powers is to enable the learned Trial Court to arrive at the truth and it is neither to help the prosecution nor the defence. Even in case of defective

investigation the Court may have to adopt an active and analytical role to ensure that truth is established by having the recourse to section 311 Cr

PC instead of ''throwing hands in the air in despair''. It would not be right in acquitting the accused person solely on account of the defective

investigation.

87. It is the settled position of law that even after both parties have closed their cases it is open to the learned trial judge to summon any person as

a witness, if his evidence appears to him to be essential to the just decision of the case, since the section itself postulates that Court can summon

the witness u/s 311 Cr PC at any stage of the trial. Such being the position of law, a material witness can be summoned even when the case fixed

for judgment. In this connection it should also be borne in mind that a trial within the meaning of this section under 311 Cr PC terminates with the

pronouncement of Judgment and until that stage is reached fresh evidence can be called under this section for arriving at a just and correct decision

in a case.

88. True it is, that the power u/s 311 can be exercised both at the behest of defence as well as prosecution. However, since the object of the

provision as a whole is to do justice not only from the point of view of the accussed and the prosecution but also from the point of view of an

orderly society, the trial judges should be prompt enough to exercise their wide discretion in its proper perspective by invoking such judicial

discretion suo moto in appropriate cases without recording desperation in their judgment on conclusion of the trial. Similar, is the situation in case

of exercise of power vested u/s 165 of Evidence Act which clearly lays down that the judge may in order to discover or to obtain proper number

of relevant facts, ask any question he pleases in any form at any time to any witness or to the parties about the facts relevant or irrelevant and make

an order, directing production of any document etc.

89. A meticulous reading of the Judgment impugned reveals that the learned Trial Judge has miserably failed to take into consideration important

materials placed on record by the prosecution. On the contrary he has based his findings leading to an order acquittal on inadmissible evidence and

conjectures. I have no hesitation in holding that findings arrived at by the learned trial judge are perverse. In fact, it would be flagrant injustice in the

event the order of acquittal is sustained.

90. Section 386 postulates that in an appeal from the order of acquittal, three options are open to the Appellate Court and out of those three

options, the first one regarding direction of further inquiry is not necessitated in this case. This Appellate Court is also not in a position to pass an

order finding accused persons guilty and to award sentence on them on the basis of materials as are already on record. It would also not be

judicious to call for additional evidence in exercise of power vested upon the Appellate Court u/s 391 Cr PC. In such a situation the best course of

action open to this Appellate Court for elucidation of truth is to send back the entire matter on remand.

91. It is, therefore, importantly important to note that in view of learned Trial Court"s utter failure to make the best use of plenary power as

envisaged u/s 311 Cr PC and section 165 of the Indian Evidence Act during trial Justice itself has become a casualty. True, more than two

decades have silently elapsed from the date of delivery judgment, yet, judicial conscience of this Court dictates us to set aside the order of acquittal

impugned in our pursuit to reinforce sense of justice. Therefore, to avoid recurrence of such unpalatable situation of similar nature learned Trial

Courts are required to strictly follow the mandate of the Ho"ble Apex Court, as already discussed preceding paragraphs, and to have recourse to

the sagacious exercise of plenary powers vested upon them under salutary provisions of section 311 Cr PC and section 165 of the Indian

Evidence Act during criminal trial in appropriate cases to prevent gross miscarriage of justice or to secure the ends of justice.

92. In the ultimate analysis and evaluation of materials and Peculiar circumstances on record I fully agree with My Lord that an order of remand is

absolutely necessitated. I also respectfully concur with the direction passed by My Lord that the learned Trial Court would deliver judgment afresh

within a specified time frame on consideration of evidence and materials already on record and further evidence both oral and documentary which

would be required to be brought on record in accordance with law for a just decision in this criminal trial on remand.